



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 3141-99

25 May 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 24 May 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you reenlisted in the Navy on 3 December 1963 for six years as a BM3 (E-4). At the time of your reenlistment, you had completed nearly six years of prior active service.

The record reflects that you served only two months without incident. During the 10 month period from February to December 1964, you received three nonjudicial punishments (NJP) and were convicted by a summary court-martial. Your offenses consisted of four brief periods of unauthorized absence (UA) totalling about 20 days and sleeping on watch. As a result of these four disciplinary actions you were reduced in rate to BMSA (E-2).

Thereafter you continued to serve without further incident and were again advanced to BM3. However, during the 21 month period February 1967 to November 1968, you were convicted by three special courts-martial of four periods of UA from 31 December

1966 to 2 February 1967, 5 July to 5 September 1967, 18 October 1967 to 13 February 1968, and 22 May to 13 September 1968; totalling about 335 days.

You were reported UA again on 30 April 1970 and remained absent until you were apprehended by civil authorities on 16 April 1976. On 11 January 1977 you were convicted by general court-martial of the foregoing period of UA of nearly six years. You were sentenced to confinement at hard labor for nine months, forfeitures of \$50 per month for nine months, reduction in rate to BMSA, and a bad conduct discharge. On 11 April 1977 the findings and sentence were affirmed pursuant. Clemency was denied and you received the bad conduct discharge on 14 October 1977.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your prior honorable service and the fact that it has been more than 22 years since you were discharged. The Board noted the general court-martial record of trial, the report of investigation under Article 32 of the Uniform code of Military Justice, character references attesting to your ministry and service to your community, and the medical records showing that you now suffer from end-stage renal disease and are undergoing dialysis treatment. The Board also noted your contentions to the effect that the discharge is unjust given your two prior honorable discharges, the transformation in your life over the past 22 years, and your need for veterans' benefits. The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given your record of three NJPs and convictions by a summary court-martial, three special courts-martial and a general court-martial. The Board is precluded by law from reviewing the findings of a court-martial and must restrict its review to determining if the sentence of the court-martial should be reduced as a matter of clemency. Your total lost time due to UA and military confinement exceeded eight years. Trial by general court-martial was warranted by the gravity of the offense charged. Your conviction and discharge were effected in accordance with applicable law and regulations, and the discharge appropriately characterized your service. Your need for veterans' benefits does not provide a valid basis for recharacterization of your discharge. It appeared to the Board that you may be eligible for veterans benefits based on your prior honorable service. While your contributions to your community as a minister are notable, the Board did not find they outweighed the prolonged period of UA that resulted in your conviction and discharge. The Board concluded the discharge was proper and no clemency is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director